

**REMARKS/ARGUMENTS**

Claims 1-21 and 47-49 are pending in this application. By this Amendment, claims 47-49 are added. Support for the claims can be found throughout the specification, including the original claims and the drawings. Reconsideration and withdrawal of the rejections in view of the foregoing Amendments and the following remarks is respectfully requested.

**I. Interview**

The Examiner is thanked for the courtesies extended to Applicant's representative during the interview conducted on June 3, 2008, and for the subsequent Interview Summary issued on June 9, 2008. The substance of the interview, including any agreements reached, is reflected in the above amendments and the following remarks.

The Examiner's Interview Summary, as well as the Examiner's response in the April 9 Office Action, indicate that the pending claims and Applicants' corresponding arguments regarding their allowability have been considered by the Board of Patent Appeals and Interferences (BPAI), and that the BPAI has upheld the Examiner's rejections. However, Applicants note that the previous appeal and the BPAI's decision was directed to a different set of apparatus claims. The Appeal did not relate to the currently pending set of method claims.

After the BPAI's decision was rendered, claims 1-21 were amended (in the Amendment filed January 11, 2008) to recite method steps associated with a method of transmitting a message to one or more recipients. It is respectfully submitted that the scope of the claims as currently pending is different than the scope of the claims that were considered by the BPAI. While Applicants understand the Examiner's unwillingness to "allow claims that are against the

BPAI's decision," as stated in the Interview Summary and in the Office Action, it is noted that the claims as currently pending have a different scope than the claims considered during the previous appeal, and as such, should be given separate consideration.

## II. Rejection Under 35 U.S.C. §102(e)

The Office Action rejects claims 1, 5-8, 10, 12-14 and 19-21 under 35 U.S.C. §102(e) over U.S. Patent No. 6,549,768 to Fraccaroli. The rejection is respectfully traversed.

Independent claim 1 is directed to a method of transmitting a message to one or more recipients in a message pushing system that includes a database of user profiles of individual potential recipients and telecommunications links for communicating with message sending and receiving devices. The method includes receiving a message from a message sending device, said message comprising details of an intended recipient of said message. The method also includes interrogating said database to find user profiles matching said details of the intended recipient of said message, thereby establishing one or more members who may be the intended recipient. Claim 1 further recites transmitting said message to message receiving means of the one or more members who may be the intended recipient. Fraccaroli neither discloses nor suggests such features, or the claimed combination of features.

More specifically, as previously set forth, Fraccaroli discloses as prior art (referred to in the Office Action) a number of different matching systems. In a first prior art system, a recipient is selected from a database based on a matching of profiles and preferences previously stored in the database. The database, and not the requester, selects an intended recipient. Further, in this first prior art system, three separate messages are generated in order to initiate

and complete contact between a requester and a recipient. In contrast, independent claim 1 recites using a single message to transmit details related to an intended recipient of a message to a database, to interrogate the database and generate matches, and to transmit that message to a message receiving means of a member who may be the intended recipient.

In a second prior art system, wearable devices loaded with a limited amount of personal information detect when similar devices are within short range, and the devices signal one another when a compatible party may be within range. As with the first prior art system, this second prior art system does not allow a user to select an intended recipient, and does not allow for any type of personal message to be sent between a requester and a recipient, let alone a single message that lists personal information and preferences, interrogates a central database, and is then transmitted to a recipient.

Fraccaroli discloses in Figures 1-2 a system that uses cellular phone technology to provide matching between compatible subscribers in the same geographic location. In this system, as a subscriber enters a service area 103, the subscriber's mobile station (cell phone) 102 is registered, and an associated individual profile is transferred to an appropriate server 106 and matching engine 107 for the new service area 103. Matches are generated by the matching engine 107 for active mobile stations 102 within that particular service area 103 at that particular time, and the resulting matches are sent from the server 106 to the individual mobile stations 102. The subscriber who receives the resulting matches may then choose to send a message to one of the matches.

As with the two prior art systems discussed above, in the system shown in Figures 1-2 of Fraccaroli, the subscriber does not select an individual intended recipient, nor does the subscriber send a message to a central system that describes physical attributes or a location of such a selected, intended recipient. Rather, these matches are generated by the matching engine 107.

Further, as with the prior art systems, the system shown in Figures 1-2 of Fraccaroli requires that multiple messages be generated and sent in order to initiate and complete contact between a requester and a recipient. Even in the system shown in Figures 1-2, Fraccaroli neither discloses nor suggests that a single message may be used to list personal information and preferences, interrogate a central database, and then transmit to a recipient, as recited in independent claim 1.

Additionally, all of the systems disclosed by Fraccaroli are location or proximity dependent. For example, in the first prior art system, location information is limited to a geographic preference in a subscriber profile, such as, for example, a city in which the subscriber resides, so as to limit the pool of matches to those subscribers who could reasonably meet. Thus, subscribers in two different locations will not be matched by the database, nor will a first subscriber in a first location generate a message to a second subscriber observed at a second location using Fraccaroli's first prior art system. In the second prior art system, the wearable devices rely on proximity to one another to establish matches. Thus, subscribers in two different locations could not be matched, nor could they make contact. Likewise, the system shown in Figures 1-2 also relies on proximity, in this case, mobile stations 102 within the same service area

103, to establish matches. Subscribers, or mobile stations 102, in two separate service areas 103 would not be matched, nor would they be able to make contact using this system.

For all of these reasons, it is respectfully submitted that independent claim 1 is not anticipated by Fraccaroli, and thus the rejection of independent claim 1 under 35 U.S.C. §102(e) over Fraccaroli should be withdrawn. Dependent claims 5-8, 10, 12-14 and 19-21 are allowable at least for the reasons set forth above with respect to independent claim 1, from which they depend, as well as for their added features.

More specifically, as set forth above, Fraccaroli neither discloses nor suggests that information about the location of the recipient includes frequently visited locations, as recited, for example, in claim 7, nor that it includes previous locations, as recited, for example, in claim 8. Rather, as set forth above, the systems disclosed by Fraccaroli rely on physical proximity between subscribers to establish matches.

### **III. Rejection Under 35 U.S.C. §103(a)**

The Office Action rejects claims 2-4, 9, 11 and 15-18 under 35 U.S.C. §103(a) over Fraccaroli. The rejection is respectfully traversed.

Dependent claims 2-4, 9, 11 and 15-18 are allowable over Fraccaroli at least for the reasons set forth above with respect to independent claim 1, from which they depend, as well as for their added features. Further, it would not have been obvious to modify the system disclosed by Fraccaroli in the manner suggested in the Office Action.

More specifically, each of the systems disclosed by Fraccaroli requires that multiple messages be sent and received in order to initiate and complete contact between a requester and

a recipient. None of Fraccaroli's systems could be adapted to perform this same type of function using a single message. For example, in the system shown in Figures 1-2 of Fraccaroli, a subscriber must wait until the matching engine 107 provides matches before the requesting subscriber can generate and send a message to a recipient on a list of matches. The original message generated by a subscriber, merely submitting to the server their personal profile, would clearly not be used to initiate contact with a recipient later chosen from the matching list generated by the matching engine 107. Without even taking into consideration the various messages required between the mobile stations 102 and the various HLRs 105 and associated servers 106 and matching engines 107 as the stations 102 move amongst service areas 103, Fraccaroli's system requires a minimum of three messages to provide contact between a requesting subscriber and a recipient (a first message to establish a profile, a second message forwarding the resulting matches from the matching engine 107, and a third message from the requesting subscriber to a recipient).

Accordingly, it is respectfully submitted that claims 2-4, 9, 11 and 15-18 are allowable over Fraccaroli, and thus the rejection of claims 2-4, 9, 11 and 15-18 under 35 U.S.C. §103(a) over Fraccaroli should be withdrawn.

#### **IV. New Claims 47-49**

New claims 47-49 are added to the application. It is respectfully submitted that new claims 47-49 meet the requirements of 35 U.S.C. §112. New dependent claim 47 is allowable at least for the reasons set forth above with respect to independent claim 1, from which it depends, as well as for its added features. Further, new claim 47 recites that the details of the intended

recipient included in the received message include a plurality of physical characteristics of the intended recipient observed by a sender of the message and a physical location of the recipient at the time the plurality of physical characteristics were observed by the sender. New claim 47 also recites that the sender causes the message pushing system to interrogate said database and transmit said message from a current location that is different from the physical location of the recipient at the time the plurality of physical characteristics were observed by the sender. In contrast, as set forth above, all of the systems disclosed by Fraccaroli are location/proximity dependent, and thus do not operate in this manner, nor could they be adapted to do so.

New independent claim 48 is directed to a method of transmitting a message to one or more recipients in a message pushing system. New independent claim 48 recites, *inter alia*, selecting an intended recipient for a message at a first location, and observing a plurality of personal characteristics of the intended recipient at the first location, and generating a message at a second location using a message sending device, the message including the plurality of personal characteristics observed at the first location. As set forth above, Fraccaroli neither discloses nor suggests such features, or the claimed combination of features. New dependent claim 49 is allowable at least for the reasons set forth above with respect to new independent claim 48, from which it depends, as well as for its added features.

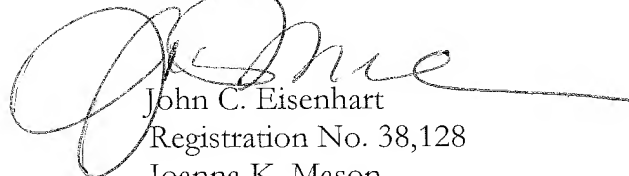
### CONCLUSION

In view of the foregoing amendments and remarks, it is respectfully submitted that the application is in condition for allowance. If the Examiner believes that any additional changes

would place the application in better condition for allowance, the Examiner is invited to contact the undersigned, Joanna K. Mason, at the telephone number listed below.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this, concurrent and future replies, including extension of time fees, to Deposit Account 16-0607 and please credit any excess fees to such deposit account.

Respectfully submitted,  
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